

Farm Service Agency, USDA

§ 759.2

would have been entitled if the performance rendered had met all requirements.

§ 755.16 Access to farms and to farm records.

County committeemen or their authorized representatives, or any authorized representative of the Secretary of Agriculture, shall have such access to farms and to records pertaining thereto as is necessary to make acreage determinations and to determine the extent of compliance with the terms of the contract.

§ 755.17 Preservation of cropland, crop acreage and allotment history.

The cropland, crop acreage, and allotment history applicable to the designated acreage shall be preserved, for any Federal program under which such history is used as a basis for an allotment or other limitation on the production of such crop, for the period covered by the contract and an equal period thereafter so long as the approved practice is maintained on the land.

§ 755.18 Appeals.

Any person may obtain reconsideration and review of determinations made under this subpart in accordance with the Appeal Regulations, part 780 of this chapter (29 FR 8200), as amended.

§ 755.19 Availability of funds.

The provisions of this program are necessarily subject to such legislation as the Congress of the United States may hereafter enact; the payments provided for in this subpart are contingent upon such appropriations as the Congress has or may hereafter provide for such purpose, and the amount of such payments must necessarily be within the limits finally determined by such appropriations.

§ 755.20 Rural community development projects.

(a) Notwithstanding any other provision of this subpart, the county committee, in accordance with instructions issued by the Deputy Administrator, may enter into a contract with a State, county, city, town, or subdivision

thereof, or a group acting for such a body, which owns, operates, or occupies land in the Appalachian Region. The contracts approved under this section shall be for projects which promote rural community development and conservation of the soil and water resources of the region.

(b) Cost-sharing approved under this section shall not exceed 80 per centum of the cost of carrying out the approved land uses and conservation treatment on 50 acres of land occupied by such owner, operator, or occupier.

[35 FR 8442, May 29, 1970]

PART 759—SMALL HOG OPERATION PAYMENT PROGRAM

Sec.

759.1 Applicability.

759.2 Administration.

759.3 Definitions.

759.4 Time and method for application.

759.5 Eligibility.

759.6 Rate of payment and limitations on funding.

759.7 Appeals.

759.8 Misrepresentation and scheme or device.

759.9 Estates, trusts, and minors.

759.10 Death, incompetency, or disappearance.

759.11 Maintaining records.

759.12 Refunds; joint and several liability.

AUTHORITY: 7 U.S.C. 612c.

SOURCE: 64 FR 6496, Feb. 10, 1999, unless otherwise noted. Redesignated at 64 FR 62565, Nov. 17, 1999.

§ 759.1 Applicability.

This part establishes the Small Hog Operations Program. The purpose of this program is to provide benefits to hog operations under clause (3) of section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) in order to reestablish their purchasing power in connection with the normal production of hogs for domestic consumption.

§ 759.2 Administration.

(a) This part shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Deputy Administrator for Farm Programs, FSA. The program shall be carried out in the field by FSA State and county committees (State and county committees).

§ 759.3

7 CFR Ch. VII (1–1–02 Edition)

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No delegation herein to a State or county committee shall preclude the Deputy Administrator for Farm Programs, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 759.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Small Hog Operation Payment Program established by this part.

Application means the Small Hog Operation Payment Program Application, FSA-1042.

Cost-plus contract means an agreement between a hog operation and a purchaser which bases payment to the hog operation on the estimated cost of production of a hog plus a profit margin.

Department means the United States Department of Agriculture.

Eligible hogs means feeder pigs and slaughter hogs.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Feeder pigs means young pigs that are sold to another person for further feeding for a period of more than 1 month.

Fixed-price contract means an agreement between a hog operation and a purchaser which bases payment at a negotiated fixed price and includes contracts that may specify the duration and minimum and/or maximum number of hogs to be delivered during the contract period.

Hog operation means any person or group of persons who as a single unit raises hogs and whose production and facilities are located in the United States.

Marketing period means the period beginning on July 1, 1998, and ending on December 31, 1998.

Negotiated cash sales means a sale in which the price is determined by interactions between the hog operation and the purchaser during the current day, for delivery within the next 7 slaughter days, and does not include hogs which are sold under contract.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

Slaughter hogs means barrows, gilts, sows, and boars that are sold for immediate slaughter.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 759.4 Time and method for application.

(a) Hog operations may obtain an application, Form FSA-1042 (Small Hog Operation Payment Program Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the FSA-1042 at <http://www.fsa.usda.gov/dafp/psd/>.

Farm Service Agency, USDA

§ 759.6

(b) A request for benefits under this part must be submitted on a completed Form FSA-1042. The Form FSA-1042 should be submitted to the FSA county office serving the county where the hog operation is located but, in any case, must be received by the FSA County Office by the close of business on September 24, 1999. Applications not received by the close of business on September 24, 1999, will be returned as not having been timely filed and the hog operation will not be eligible for benefits under this program.

(c) The hog operation requesting benefits under this part must certify with respect to the accuracy and truthfulness of the information provided in their application for benefits. All information provided is subject to verification and spot checks by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

[64 FR 6497, Feb. 10, 1999, as amended at 64 FR 47099, Aug. 30, 1999]

§ 759.5 Eligibility.

(a) If a hog operation is owned by one or more individuals or entities who have an annual gross revenue of \$2.5 million or more in farming and ranching operations in calendar year 1998, the payment to the operation will be reduced by a pro rata share based upon the ownership interest of such entity or individual.

(b) To be eligible to receive cash payments under this part, a hog operation must:

(1) Have sold fewer than 2,500 hogs (produced in the United States) during the period of July 1, 1998, through December 31, 1998;

(2) Have sold hogs on a negotiated cash basis or under a contract other than a fixed-price or cost-plus contract during the marketing period;

(3) Be engaged in the business of producing and marketing agricultural products at the time of filing the application; and

(4) Apply for payments during the application period.

(c) Hogs marketed during the marketing period under fixed-price contracts, cost-plus contracts, or under any circumstance not equivalent to be eligible for benefits under this part with respect to hogs subject to such sales.

(d) A hog operation must submit a timely application and comply with all other terms and conditions of this part and those that are otherwise contained in the application to be eligible for benefits under this part.

[64 FR 6497, Feb. 10, 1999, as amended at 64 FR 47099, Aug. 30, 1999]

§ 759.6 Rate of payment and limitations on funding.

(a) Benefits under this part may be made to hog operations for the quantity of eligible slaughter hogs and feeder pigs actually marketed during the marketing period in accordance with the limitations set forth in this section. Payments will be calculated by operation and shall be made in an amount determined by:

(1) Multiplying \$3.60 by the number of eligible feeder pigs marketed during the marketing period; plus

(2) Multiplying \$10 by the number of eligible slaughter hogs marketed during the marketing period;

(3) Limiting the payment per hog operation otherwise calculated under paragraphs (a)(1) and (2) of this section to \$5,000; and

(4) Reducing the amount due as calculated under paragraphs (a)(1) through (3) of this section by amounts previously paid under this part based on marketings in the same period and, for claims filed after February 12, 1999, by reducing the payment further to zero as necessary to insure subject to paragraph (c), that the total payments under this part do not exceed \$175 million.

(b) Producers who filed an application under this part prior to February 12, 1999, do not need to file another application in order to receive benefits at the increased rates announced in the

§ 759.7

FEDERAL REGISTER published on August 30, 1999. A producer who wishes to amend an application filed prior to February 12, 1999, may file an amended application by the deadline for new applications specified in § 759.4 of this part.

(c) To the extent that \$175 million is not sufficient to cover all claims under this part, claims filed on or before February 12, 1999, shall be paid in full for the eligible hogs and feeder pigs which were the subject of that claim. For claims filed after that date, the claims will be paid in the manner deemed appropriate by FSA to assure, to the extent practicable, that the claims are paid in the order in which they are filed, until the available funds are expended at which point no additional claims will be paid.

[64 FR 47099, Aug. 30, 1999]

§ 759.7 Appeals.

Any hog operation which is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 11 of this title and part 780 of this title.

§ 759.8 Misrepresentation and scheme or device.

(a) A hog operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a hog operation engaged in a misrepresentation, scheme, or device, or to any other person as a result of the hog operation's actions, shall be refunded with interest together with such other sums as may become due. Any hog operation or person engaged in acts prohibited by this section and any hog operation or person receiving payment under this part shall be jointly and severally liable for any refund due under this section and for related

7 CFR Ch. VII (1-1-02 Edition)

charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 759.9 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible operator of a hog operation shall be eligible for assistance under this part only if such operation meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 759.10 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a hog operation that is eligible to receive benefits in accordance with this part, such hog operation may receive such benefits.

§ 759.11 Maintaining records.

Hog operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein and the number of head of slaughter hogs and feeder pigs sold during the marketing period. Such records and accounts must be retained for at least 3 years after the date of the cash payment to hog operations under this program.

§ 759.12 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any

refund of a payment to FSA shall otherwise become due in connection with the application, or this part, all payments made under this part to any hog operation shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons listed on a hog operation's application shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this part.

(c) Interest shall be applicable to refunds required of the hog operation if FSA determines that payments or other assistance were provided to the producer was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date FSA made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the hog operation.

(d) Interest determined in accordance with paragraph (c) of this section shall not be applicable to refunds required of the hog operation because of unintentional misaction on the part of the hog operation, as determined by FSA.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 792.

(f) Hog operations must refund to FSA any excess payments made by FSA with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Dairy Indemnity Payment Program

PROGRAM OPERATIONS

Sec.

760.1 Administration.

760.2 Definitions.

PAYMENTS TO DAIRY FARMERS FOR MILK

760.3 Indemnity payments on milk.

760.4 Normal marketings of milk.

760.5 Fair market value of milk.

760.6 Information to be furnished.

760.7 Other requirements for affected farmers.

760.8 Application for payments for milk.

760.9 Other legal recourse.

PAYMENTS TO MANUFACTURERS AFFECTED BY PESTICIDES

760.20 Payments to manufacturers of dairy products.

760.21 Application for payments by manufacturers.

760.22 Information to be furnished by manufacturer.

760.23 Other requirements for manufacturers.

GENERAL PROVISIONS

760.24 Limitation of authority.

760.25 Estates and trusts; minors.

760.26 Appeals.

760.27 Setoffs.

760.28 Overdisbursement.

760.29 Death, incompetency, or disappearance.

760.30 Records and inspection thereof.

760.31 Assignment.

760.32 Instructions and forms.

760.33 Availability of funds.

760.34 Paperwork Reduction Act assigned numbers.

Subpart—Beekeeper Indemnity Payment Program (1978-80) [Reserved]

Subpart—Dairy Indemnity Payment Program

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